IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4036 OF 2007

Karsiddha Gangaram Shelake
and Anr. .. Petitioners

Versus

Dhondiram Sidhu Chambhar .. Respondent

Mr.S.M.Kamble for petitioners
Mr.Karandikar for respondent.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 12th December 2007

P.C.

. The petitioner is original defendant in RCS No.119 of 2006 which is pending on the file of learned Civil Judge, Junior Division, Kagal.

That is a suit filed by the respondent for permanent injunction restraining the petitioners from disturbing his possession and peaceful occupation of the suit land. The suit land is described in para 1 of the plaint. It is Revenue Survey No.68 and Hissa No.H-8, admeasuring 72 Rs.

2. The petitioners and respondents claim to have acquired this land on the basis of a registered sale deed dated 9th June 1989. The petitioner No.1 original defendant No.1 claims to have purchased six anna share under this deed whereas respondent plaintiff claims to have purchased Ten anna share. The dispute before the trial court was whether the documents evidence this purchase or whether the respondent plaintiff is right in contending that under this document, he has exclusive possession of the entire 72 Rs. That dispute having yet to be resolved and prima facie finding that the petitioners are not in possession, that the subject injunction has been

issued.

3. The appeal therefrom preferred by the petitioners has been dismissed. Aggrieved by this order the present petition is filed.

4. Mr.Karandikar upon taking instructions makes a statement that without prejudice to the rights and contentions of the plaintiff in the suit, the respondent plaintiff would not alienate, encumber, part with possession or create third party rights in any manner whatsoever in respect of the suit land which is described in para (1) of the plaint. Reliance is placed by Mr.Kamble on the documents and the observations of the lower appellate court and more particularly that to be found in para 6 of the impugned order.

5. There is no demarcation of the land at site inasmuch as which portion is purchased by

the present petitioners and respondents has not been ascertained as yet. If the petitioners are successful in having the land demarcated at site, then, it would be open for them to apply for modification of the order of the trial court and the trial court to consider such an application, if made, on the basis of the materials then produced and in accordance with law, without being influenced by the observations in the earlier orders and disposal of this petition. Petition disposed of in the above terms.

(S.C.Dharmadhikari, J)